IN THE SUPREME COURT OF THE
UNITED STATES

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| WESLEY PARKS | APPELLANT |
| VS. | NO. |
| STATE OF MISSISSIPPI | APPELLEE |

# PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE
UNITED STATES

WESLEY PARKS — APPELLANT

VS. — NO. ....

STATE OF MISSISSIPPI — APPELLEE

PETITION FOR WRIT OF CERTIORARI

I.

This is an appeal of a criminal case by way of a Petition for a Writ of Certiorari from an opinion of the Supreme Court of the State of Mississippi adverse to Appellant rendered on October 23, 1972.

The original written opinion of the Supreme Court of the State of Mississippi was rendered on October 9, 1972; and, Appellant's motion for rehearing was denied by the Supreme Court of Mississippi on October 23, 1972.

The decisions of the Supreme Court of Mississippi referred to above are reported in: 267 So 2nd 302.

An exact copy of said opinions delivered in the Court below is appended hereto as provided by the Rules of this Court.

II.

JURISDICTION

Jurisdiction of this Court is invoked for a review of a final decision in a criminal case from the Supreme Court of the State of Mississippi of said decision rendered October 23, 1972. The statutory provision believed to confer on this Court jurisdiction is: Title 28, Section 1257 (3) United States Code Annotated,

"By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

We submit that Title 28, Section 1257 (3) U. S. Code cited above confers upon this Court jurisdiction to review

the decisions of the Supreme Court of Mississippi in this case by way of Writ of Certiorari, in that Petitioner feels that his Constitutional right of equal protection and due process of law guaranteed him by the Fourteenth Amendment to the Constitution of the United States was denied him by the Court below in its refusal to grant a change of Venue.

United States Constitution, Amendment XIV, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III.

QUESTION PRESENTED FOR REVIEW:

Whether the Court below denied Petitioner his Constitutional right of equal protection and due process of law guaranteed to him by the Fourteenth Amendment to the United States Constitution by said Court overruling Petitioner's several motions for a

change of venue.

IV.

Statutory provisions of Mississippi Law for change of venue:

Mississippi Code of 1942, As Amended, Section 2508:

"On satisfactory showing in writing, sworn to by the prisoner, made to the Court, or to the Judge thereof in vacation, supported by the affidavits of two or more credible persons, that, by reason of prejudgment of the case, or grudge or ill will to the defendant in the public mind, he cannot have a fair and impartial trial in the county where the offense is

charged to have been committed, the circuit court, or the judge thereof in vaction may change the venue in any criminal case to a convenient county, upon such terms, as to the costs in the case, as may be proper."

IN THE SUPREME COURT OF THE
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WESLEY PARKS — APPELLANT

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STATE OF MISSISSIPPI — APPELLEE

## STATEMENT OF CASE

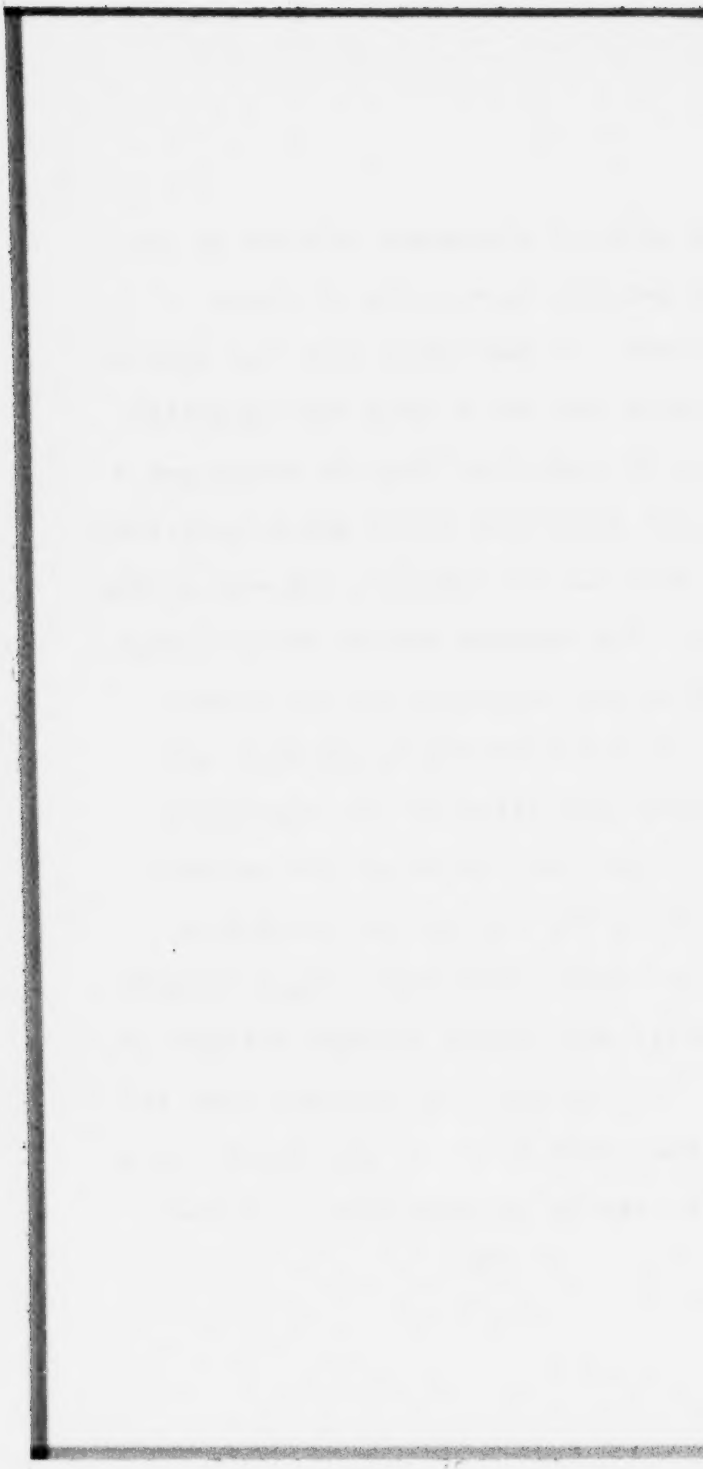
The Appellant, WESLEY PARKS, was indicted during the June, 1971 Term of the Circuit Court of Sunflower County, Mississippi, on the charge of murder. (R-2) The Appellant was arraigned and pled not guilty. (R-5) A Motion for Severance was made and the lower Court granted the Motion. (R-6-7). A Motion for Change of Venue, with the proper affidavit, was filed. (R-8-11) Later, a Motion for Re-Setting of Hearing for a Change of Venue (R-13) was filed and this request was denied. (R-18) There

was testimony offered in support of the Motion for Change of Venue, after a lengthy hearing, the Court entered an order denying the Change of Venue. (R-19) This cause was subsequently remanded to the Federal Court on a Petition for Removal by the Appellant (R-20) and subsequently the Circuit Court of Sunflower County again regained jurisdiction of said cause. On October 18, 1971, the original Motion for Change of Venue was heard. (R-66-140) There was introduced into as evidence at this hearing, numerous newspaper clippings, magazine articles, accounts of t.v. and radio spots that publicized this trial; evidence of the fact that the Appellant and his alleged accomplices had been

incarcerated in the maximum security section of the Mississippi State Penitentiary because of the fear of the Sheriff's Department of Sunflower County, Mississippi, of mob violence, the fact that there were marches held in Drew, Mississippi, the scene of the killing in protest and further evidence that the people of the county were generally enraged against the Appellant and their passions were so aroused that the Appellant could not get a fair trial. There was a testimony of 53 people offered by both the State and the Appellant on the hearing on the Motion for Change of Venue; 33 of whom testified, at that time, that the Appellant could not obtain a fair

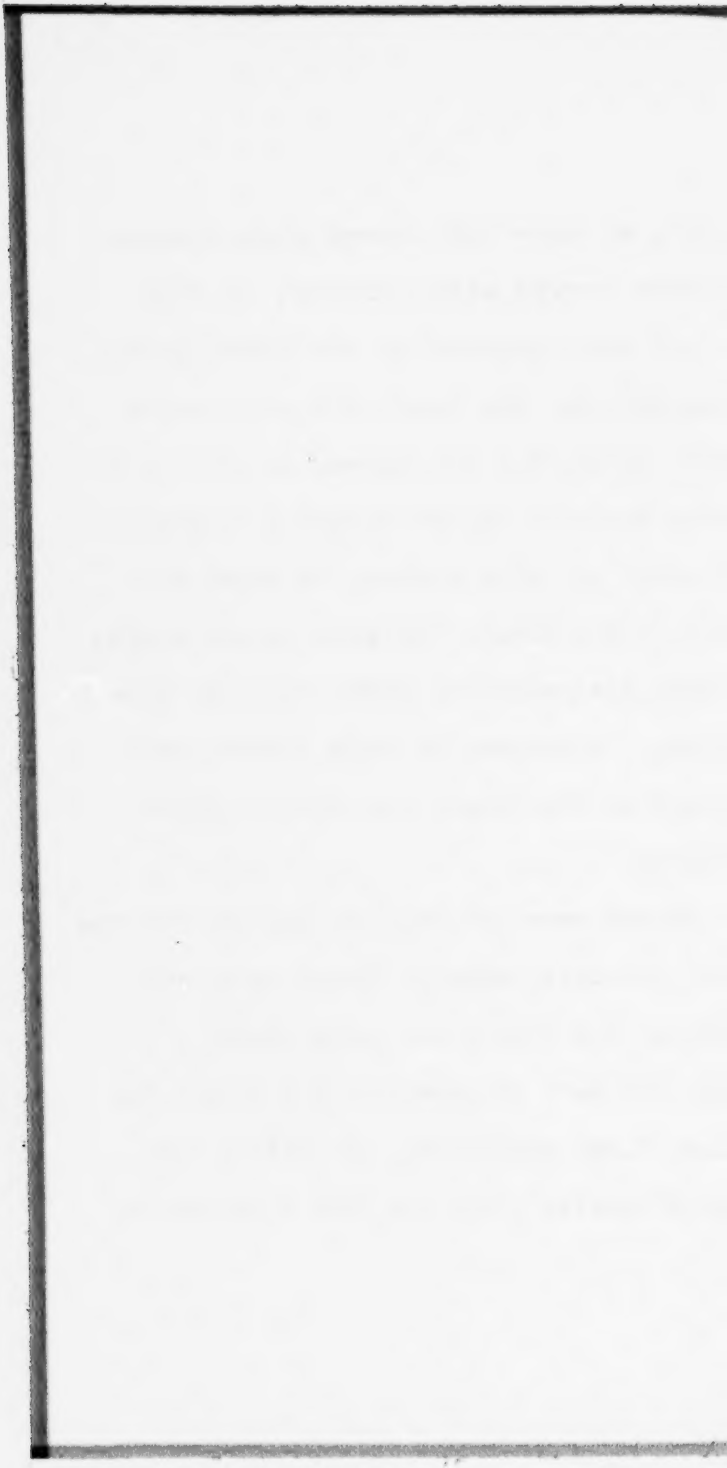
trial in Sunflower County, Mississippi; 18 of whom testified that the Appellant could get a fair trial and 7 of whom testified that they had no opinion one way or the other. Despite this overwhelming showing that the Appellant was prejudged, the Court overruled this Motion and the case was continued until the following term of Court at which time a Renewed Motion for Change of Venue (R-51) was filed, said Motion again reciting that the Appellant had been prejudged by the people of the County and that because of said prejudgment, he could not receive a fair trial. This Motion was heard during the October, 1971 Term of the Circuit Court of Sunflower County, Mississippi.

There were 57 witnesses offered by the State and the Appellant; of these witnesses, 29 testified that the Appellant could not get a fair and impartial trial; 20 testified that he could get a fair and impartial trial and 8 testified that they had no opinion, one way or the other. The Renewed Motion for a Change of Venue was overruled by the Court. (R-143) A Motion for Inspection and Discovery was filed by the Appellant (R-144-145) and an Order was entered sustaining the Motion for Inspection and Discovery. The trial began October 26, 1971, and lasted through October 29, 1971. The record will reflect that 200 veniremen were drawn by the Court for a special venire in this case. Of that



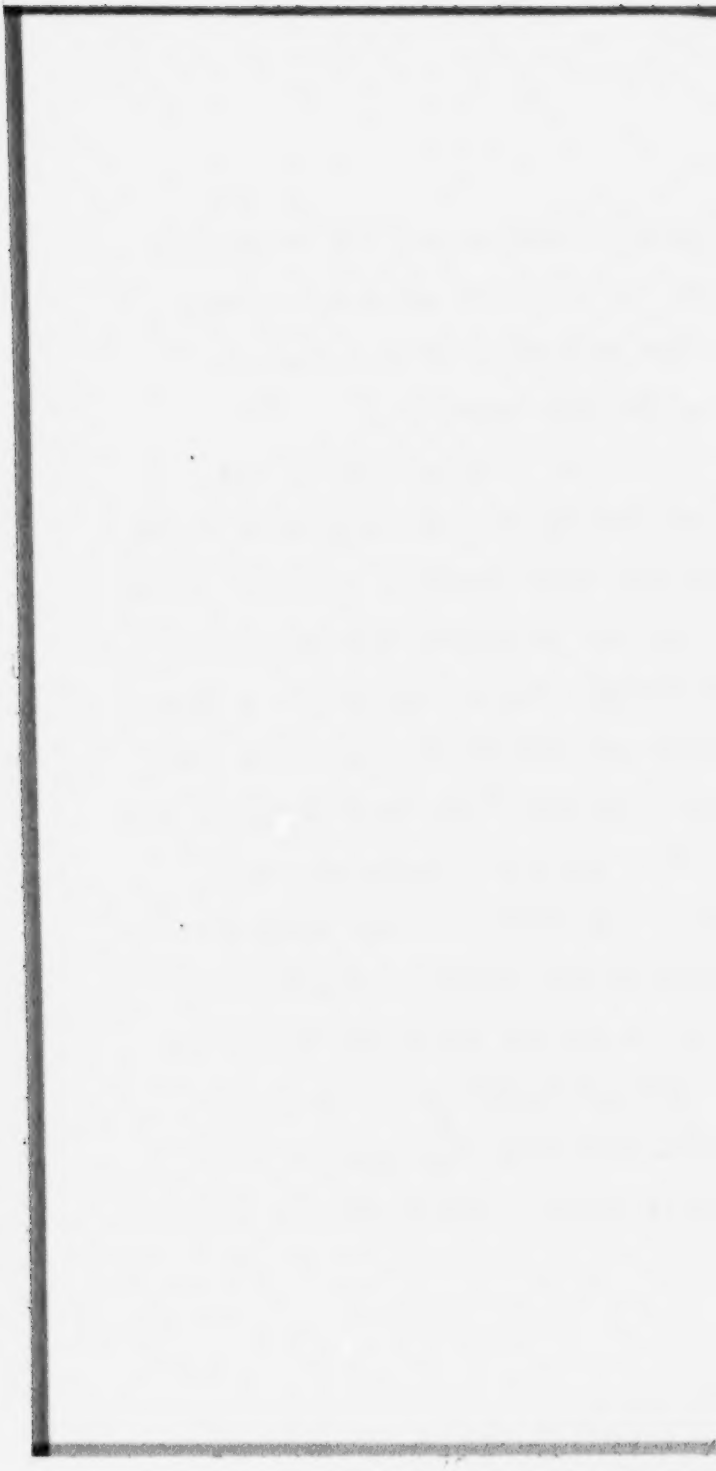
number, 69 were not served with summons; 131 were served with summons; of this 131, 29 were excused by the Court prior to empaneling the jury, for good cause shown; seven did not appear in Court; 95 of the special venire actually appeared in Court; of this number, 45 were excused by the Court for good cause shown, or were disqualified under the law from serving. Thirteen of this number were excused by the Court for having fixed opinions.

There were 24 regular jurors for the week. Of this number, three were excused by the Court for good cause shown; 11 were excused by the Court for having fixed opinions. To obtain the jury of twelve plus the two alternates,



the special venire and the 24 regular jurors for the week were exhausted, with the exception of six regular jurors for the week.

The final composition of the regular jurors for the week were eight blacks and four whites. (R-149) After the jury was selected, the Appellant again renewed for a Motion for a Change of Venue and the Court overruled the Motion. (R-150) The jury returned the verdict of guilty of manslaughter. (R-374) The Appellant was sentenced to 20 years in the State Penitentiary. (R-375) A Motion for a new trial was filed and was overruled. (R-31-32) The Appellant then appealed to this Honorable Court. The Appellant has been



released on bond since his conviction.

STATEMENT OF FACTS

Wesley Parks, the Appellant here and Wayne Parks are brothers. Allen Wilkerson is a young nephew of the brothers. The Appellant and his nephew, Allen, live in Memphis, Tennessee, and Wayne lives on a small farm just out from Drew, Mississippi.

On the afternoon of May 25, 1971, the Appellant, determined to come to Drew from Memphis with his wife and nephew, Allen, for the purpose of seeing his brother, Wayne, and his mother and father, who live near Wayne's farm. The Appellant brought with him a .22 pistol and shot-gun. He stated that when he comes to Mississippi he always

brings his pistol or shot-gun to shoot sparrows on the farm. The Appellant was drinking beer before he left Memphis and was under the influence to such an extent that his wife drove most of the way to Drew. They arrived at Wayne's farm and visited there for a while and then he and Allen visited his mother and father. The two brothers and nephew went to town and bought more beer and later came back to Wayne's for supper and after supper, the three of them drove into Drew, the Appellant operating the automobile. They went to a service station, bought some more beer, and later, they ran into a friend of theirs by the name of Bill Mayo; during all this period of time, the brothers and

nephew were drinking beer, apparently the Appellant drinking more than the others. Bill Mayo invited them to a party at his house that night. The testimony of Allen and Wayne was to the effect that after the three of them left Bill Mayo, the Appellant was driving the car north on a street in Drew with Allen in the middle of the front seat and Wayne to his right, that suddenly without any warning and without advance notice, the Appellant pulled a .22 pistol from his side or the seat of the car and fired it out the left window. The Appellant states in this regard that his memory is very vague at this time and that he does not recall firing the pistol because "I was pretty

durnk". He did not deny firing the pistol stating, "I possibly fired it--very possibly fired it out the window." (R-327)

The facts disclose that Joetha Collier, a young black high school student was a pedestrian to the left of the car and that she was killed by the bullet. It is undisputed by the record that none of the three men knew Joetha Collier or had any animosity whatever toward her. It is also undisputed, there being no circumstantial or physical evidence to the contrary, that none of the occupants of the car knew anyone had been shot. Their subsequent actions supported this statement. They continued to drive their car from the scene of

the shooting to Bill Mayo's house which is located near Drew and there they remained for some 30 minutes to an hour, revealing no apprehension or concern on their part. They left there and went to a juke house in Cleveland, Mississippi, and there remained until about 2:00 in the morning, drinking continuously, at which time, they left, stopping only long enough for Wayne to call home and tell his wife that they were on their way home. At this time they were arrested and informed they were charged with murder and were incarcerated in the Cleveland, Mississippi Jail.

There is nothing in the record to indicate that they fled the scene of the crime and that they had any knowledge

that indeed a crime had been committed.

IN THE SUPREME COURT OF THE
UNITED STATES

WESLEY PARKS — APPELLANT

VS. — NO.

STATE OF MISSISSIPPI — APPELLEE

PETITION FOR WRIT OF CERTIORARI

LEGAL ARGUMENT AND AUTHORITIES

I. THE LOWER COURT ERRED IN OVERRULING THE ORIGINAL MOTION FOR A CHANGE OF VENUE, THE FIRST RENEWED MOTION FOR A CHANGE OF VENUE AND THE SECOND RENEWED MOTION FOR A CHANGE OF VENUE.

The cases hold, without dissent, that under Section 2508, Mississippi Code of 1942, as Amended, where the affidavit for a change of venue is

sufficient under the statute, the affidavit makes a prima facie showing which must be met by proof. McGee Vs. State, 26 So. 2d 680, and other cases therein cited.

Here the defendant not only made a prima facie case, but went further, and introduced the unbiased testimony of numerous witnesses to show he was entitled to a change of venue, despite the fact that a large majority of the people of the County who were interviewed either refused, or were reluctant, to testify to the actual state of the public mind, due to personal and business reasons.

The question presented is whether the statements from the witnesses for

the state, being the statements naturally and reasonably to be expected from such witnesses under the circumstances--since the businessmen called, would not censure their own customers from the witness stand, and the politicians surely would not censure their own constituents from the witness stand and since a number of the witnesses went further and admitted that they themselves were convinced that the defendant was guilty--are sufficient to rebut the showing for the change made by defendant's application.

If the testimony of the State's witnesses is sufficient to defeat a motion for change of venue, then, we submit, there is no instance in which a

change of venue may be granted. If the testimony of the witnesses for the defendant, on the motion for change of venue can be rebutted by mere general statements that there are enough good, fair minded citizens in Sunflower County from which defendant could be expected to get a fair trial, then the statute providing for the granting of a change of venue might as well be stricken from the books.

In the case of Anderson, et al Vs. State, 92 Miss. 656, 46 So. 65, where the testimony of the State in rebuttal on motion for change of venue was based on the good citizenship of the County, the Court held that:

"It is idle to talk about a

fair and impartial trial to be had, on testimony such as is here set out, in the County at the time. The right to a fair and impartial trial is a sacred, constitutional right. To hold, on the testimony on the motion for a change of venue in this case, that these defendants were not entitled to a change of venue, would be to establish, as we have once before said, and now repeat, 'too dangerous a doctrine surely to find any place in a jurisprudence framed under Bills of Rights in which, in the land of the origin, the right to maintain inviolate the

jury trial has been written in blood with the point of the sword as the final declaration of freemen on the subject.'"

In the case of Eddins Vs. State, 110 Miss. 780, 70 So. 898, the Court said,

"The right to trial by an impartial jury is guaranteed by the organic law of the state, and when it is doubtful that such a jury can be obtained in the County of the venue of the homicide, the person on trial for his life is but asking for his rights when he requests a change of venue, and there is no imaginable reason to refuse,

except, possibly, a slight additional cost to the County."

This statement by the Court is the only logical construction and application that can be given to the statute providing for a change of venue. Certainly, in this case, the testimony on the motion raises a doubt as to whether a fair and impartial trial jury can be obtained, and if such a doubt exists, then the defendant is entitled to a change of venue. We believe that in this case, as in the case of Eddins Vs. State, the State is fearful that a change of venue would in some way, reflect upon the well-known civic virtue of the citizens of Sunflower County--Nothing could be farther from the truth.

As was stated by the Mississippi Supreme Court in the case of Magness Vs. State, 103 Miss. 30, 69 So. 8,

"The requirement of the law is not satisfied by the mere empaneling of 12 men against whom no legal complaint can be made. The defendant is entitled to be tried in a county where a fair proportion of the people qualified for jury service may be used as avenire from which a jury may be secured to try his case fairly and impartially, and uninfluenced by a preponderant sentiment that he should be flung to the lions. It is our opinion that the record

discloses this sentiment present when this case was tried, and that the defendant had not chance to secure such a jury as the law contemplates should arbitrate between the state and the defendant on trial. The learned trial judge, surrounded by the many perplexities of a trying situation, and impressed with a desire to contribute his power and influence to the enforcement of the law, strained the process of the law, and the defendant's constitutional rights were thereby infringed."

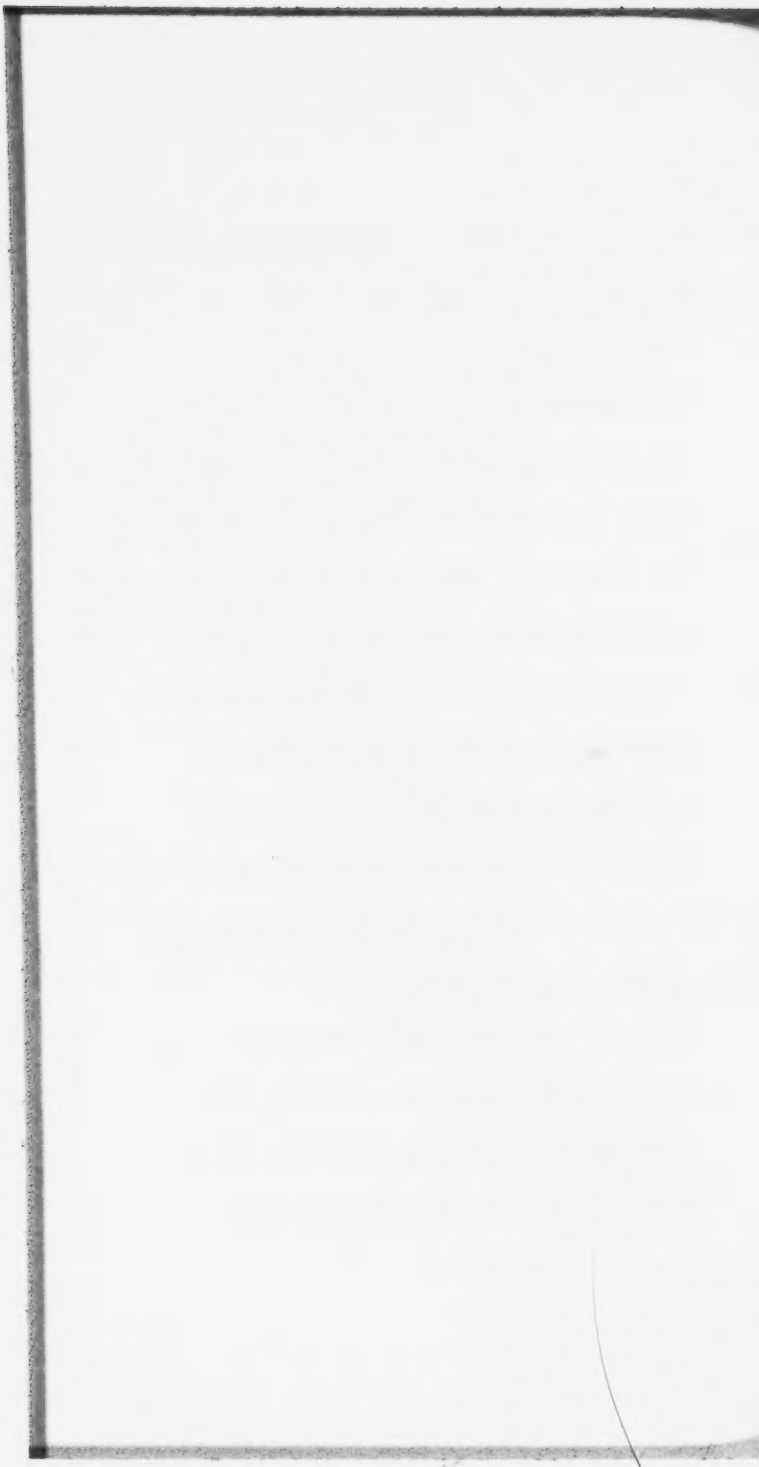
The Mississippi Supreme Court

stated in the case of Keeton Vs. State, 132 Miss. 732, 96 So. 179, that:

> "testimony warranting a change of venue in a criminal case is not overcome by a showing that 12 impartial jurors could be found in the county by picking them, or by testimony predicated wholly of the general good character of the people of the County."

As stated by the Mississippi Court in the case of Tennison Vs. State, 79 Miss. 708, 31 So. 421,

> "It is one of the crowning glories of our law, that, no matter how guilty one may be, no matter how atrocious his



crime, nor how certain his doom, when brought to trial anywhere, he shall nevertheless have the same fair and impartial trial accorded to the most innocent defendant. Those safeguards, crystallized into the constitution and laws of the land as the result of the widom of centuries of experience, must be by the Courts sacredly upheld, as well in case of the guiltiest as the most innocent defendant answering the bar of his Country. And it ought to be a reflection always patent in the public mind, that, where the crime is

atrocious, condemnation is sure, and when all these safeguards are accorded the defendants, and therefore, the most atrocious the crime, the less need is there for any infringement of these safeguards."

The Supreme Court of Mississippi held in the case of Brown Vs. State, 83 Miss. 646, 36 So. 73, and in Seals Vs. State decided in 1950, cited as 44 So. 2d 61, that where the showing made for the change of venue was strong, it should be granted no matter how many witnesses may testify that in their opinion defendant could obtain a fair trial in the County, and so hold numerous other cases cited in the decision of Brown

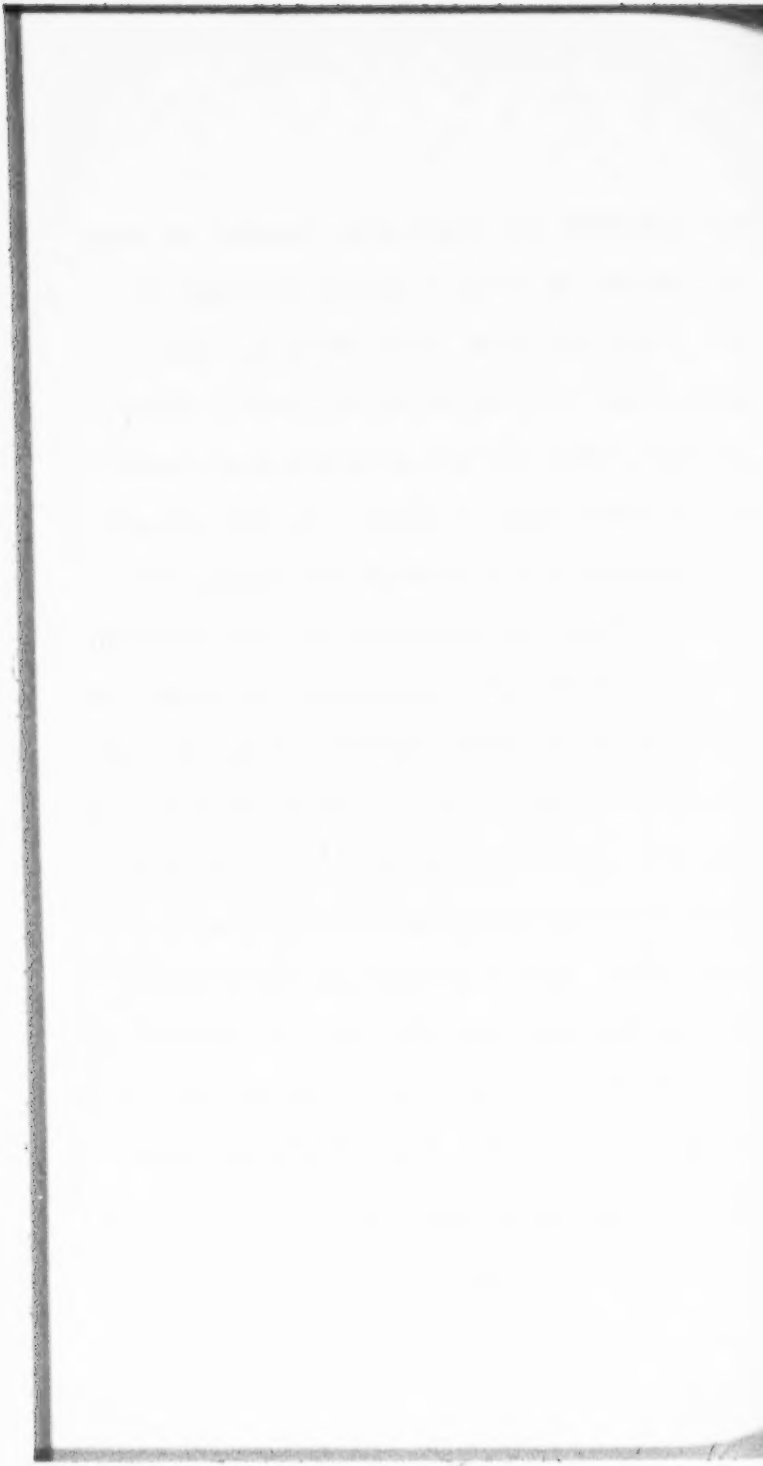
Vs. State.

The prima facie case made by defendant, the numerous witnesses offered in support thereof, the pressure on the Sheriff, the inflammatory rumors being circulated by the citizens against the defendants, certain newspaper stories, which may of the people believed, all of these elements and others it is earnestly submitted, compels the conclusion that the motion for change of venue should have been granted.

The record will reflect that immediately after the Appellant was arrested that the Sheriff of Sunflower County was so apprehensive about their safety that they were placed, not in the Sunflower County Jail, but in the

maximum security unit at Parchman where they remained until almost before the trial despite the fact Sunflower County has a new and secure jail. This unusual security procedure reflects in itself the hostility that the Sheriff's Department feared existed in Sunflower County toward this Appellant and his brother and nephew. There is in this record voluminous newspaper clippings, magazine clippings, t.v. and radio notifications, which will inform this Honorable Court that this case received nationwide publicity and even came to the attention of the President of the United States who ordered a special investigation made by the FBI. These newspaper accounts will show there was near mob action in

one section of Sunflower County as consequences of this killing and had it not been for the clear head of the mayor and police chief of Drew, Mississippi, that in all probability there would have been a riot. On the original Motion for a Change of Venue, 57 people from all sections of the county, many of whom were prominate citizens in a position to know testified and 33 of them testified that the Appellant could not get a fair trial and only 18 testified that he could get a fair and impartial trial and 7 testified that they had no opinion one way or the other. On the Renewed Motion for a Change of Venue, 57 citizens testified, of whom 29 said he could not get a fair trial



and 20 said he could get a fair and impartial trial and 8 were of no opinion. This reflects that the opinions were almost evenly divided on this question at that time.

The record reflects that of the 21 regular jurors available for jury duty, 11 were excused by the Court for having fixed opinions, this generally indicating that the Appellant had less than a 50-50 chance of getting a fair trial from the body of the citizens of Sunflower County. There were 200 veniremen summoned by the Court to obtain the jury of 12 plus the 2 alternates the special venire of 200 and the 24 regular jurors for the week were exhausted with the exception of 6 regular jurors

for the week. This is certainly indicative that there were strong feelings among these prospective jurors against this Appellant and his kinsmen and that there was prejudice or ill-feeling against him that would prevent him from obtaining a fair and impartial trial. The undersigned cannot understand the reluctance of the lower Court to grant the Change of Venue. It would have cost the County of Sunflower much less to have tried the case in a county that was free of prejudice and it would certainly have removed any doubt as to whether or not the Appellant was actually given a fair and impartial hearing by a jury of his peers.

A fair and impartial jury could

well have concluded that the Appellant did a reckless and foolish thing but that he had no intention of injuring anyone and that his incarceration for months in the maximum security unit together with the resulting publicity and the embarrassment to his family was sufficient punishment. I submit that if this Appellant had been driving a car while drunk and had struck this pedestrian and killed her, he would not have even been indicted, this being all but commonplace on the streets and highways of Mississippi, and I submit further that if this shot had killed a white person, the press of the nation would not have been inflamed or that if this Appellant had been a black who killed a

black, there would have been little or no notice of this incident. This was an example of racial prejudice in the reverse. Therefore, I respectfully submit that the lower Court erred in its failure to overrule the Motions for a Change of Venue and that this was reversable error and that the case should be reversed and remanded with instructions that it be tried anew in a county in which the Appellant can receive a fair and impartial trial.

Petitioner submits that his position and argument herein is solidly bolstered by the decisions of this Court, notable among these decisions are the following:

Leslie Irvin, Petitioner, Vs.

A. F. Dowd, Warden, 366 US 717, 6 L. ed 2d, 751, 81 S Ct 1639, decided June 5, 1961;

Wilbert Rideau, Petitioner Vs. State of Louisiana, 373 US 723, 10 L. ed 2d, 663, 83 S Ct. 1417, decided June 3, 1963;

James Edmund Groppi, Vs. State of Wisconsin, 400 Us 505, 27 L. ed 2d, 571, 91 S Ct 490, decided January 25, 1971.

## Conclusion

We urge the granting of the Writ of Certiorari because of the error hereinabove argued.

We sincerely believe that Appellant was deprived of his consitutional right

guaranteed to him by the 14th Amendment to the United States Consitution to have a jury trial free of ill-will, prejudice and passion by the trial court in denying his several Motions for a change of venue.

Respectfully submitted,

SMITH & O'HARE

BY: Wm. E. O'Hare

Wm. E. O'Hare, Attorney for Appellant

C E R T I F I C A T E

This is to certify that three copies of this Petition have been mailed to Honorable A. F. Summer, Attorney General of the State of Missi-issippi, and 40 copies of said Petition have been mailed first-class and

airmail special delivery to the Clerk of the Supreme Court, Washington, D.C.

Witness my signature this 16th day of January, 1973.

Wm. E. O'Hare

Of Counsel for Appellant

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| WESLEY PARKS | APPELLANT |
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APPENDIX

Opinion of the Court
Judgment entered by the Court
Order overruling Petition for Rehearing
Notice of Appeal to United States Supreme Court
Petition for admittance to Bail with Supersedeas
Order of Court setting amount of Bond
Appeal Bond

IN THE SUPREME COURT OF MISSISSIPPI

NO. 46,902

WESLEY PARKS

V.

STATE OF MISSISSIPPI

BRADY, JUSTICE:

The appellant, indicted and tried for murder, was found guilty of manslaughter in the Circuit Court of Sunflower County, Mississippi and sentenced to twenty years imprisonment in the state penitentiary at Parchman, Mississippi. From that verdict and sentence he appeals to this Court.

Tersely stated, the record indicates these relevant facts. On May 25, 1971, the appellant, his wife, infant son and eighteen year-old nephew,

Allen Wilkerson, a co-indictee, drove to Drew, Mississippi from their home in Memphis, Tennessee. Appellant and Wilkerson drank four quarts of beer prior to leaving that afternoon around 4:00 o'clock, p.m. They stopped en route to Drew and appellant drank another can of beer before arriving at the home of his brother, Wayne Parks, another coindictee, around 7:00 p.m. Appellant, Wayne and Allen went into Drew, drank more beer, returned to Wayne's for supper and went back into Drew for more beer. Appellant and Wayne left Allen at Slim's, a grocery store on Union Street, to buy beer while they bought gas at a Billups station. There is a conflicting testimony that while at the station appellant

flashed a pistol and made unfriendly remarks to a group of colored boys. Appellant and Wayne returned to Slim's to get Allen and, while there, they talked with Bill Mayo, a friend, who invited them over to his house for a party that night. Mayo drove away and appellant started to follow. About four stores down Union Street, in front of Susie's Cafe, appellant pointed a .22 caliber pistol out the window and fired one shot. The bullet hit and killed Miss Joetha Collier, an eighteen year-old female who was on the sidewalk. Wayne immediately told his brother to put the gun up before they were picked up for disturbing the peace. Without any knowledge of the result of the gun-

shot, the trio followed Mayo around the block to his house. They stayed at Mayo's about forty-five minutes, talking and playing pool. During this period none of the three acted suspicious or nervous in any noticeable manner. The trio then got in appellant's car, drove through Drew, within one block of Union Street, and out onto Highway 49 W and over to Cleveland. The three went to a beer joint called Hayes Marie's where they stayed from approximately 11:00 o'clock, p.m. until 1:30 a.m. They then left the beer joint and started back to Drew. They decided to call home and were arrested by the Cleveland Police Department when they stopped at a pay phone. They were placed in the Cleve-

land jail until the next day when they were taken to the maximum security unit at Parchman Penitentiary. All three were indicted for murder and a Motion for Severance was granted to the appellant.

Appellant has assigned two points as errors in this appeal. The first is that the trial court erred when it overruled his motion for a change of venue. The facts indicate that an unusual amount of publicity surrounded the death of Miss Collier and the arrest of the three men. Members of the Negro community broke windows in Drew and threatened greater violence. Demonstrations were held and marches were made down the streets of Drew. National

attention was focused on Drew and the impending trial. Defense counsel made a motion for a change of venue prior to trial which was overruled. Counsel then made its first renewed motion and the second renewed motion to change venue, both of which were overruled.

The appellant contends that he was unable to obtain a fair and impartial trial in Sunflower County. The state and defanse placed a number of witnesses on the stand on the original motion for change of venue. The majority of these witnesses testified that they thought a fair trial could not be given to the appellant. A large number testified that they thought it could be given and a few had no opinion. An almost

similar number were called on the first renewed motion with the same general results. Appellant, citing Keeton v. State, 132 Miss. 732, 738, 96 So. 179, 180 (1923), argues that it is not necessary that every qualified juror harbor prejudice against the defendant to entitle defendant to a change of venue. Keeton, supra, also states that: The statute contemplates that the jury shall not only be composed of unbiased and impartial men, but of men who have not been and will not . . . be subject to the influence of a popular demand for the defendant's conviction." Nevertheless, as is stated in Dalton v. State, 141 Miss. 841, 846, 105 So. 784, 785 (1925), it has long been the law in this

state that: "The granting of a change of venue is so largely in discretion of the trial court that a judgment of conviction will not be reversed on the ground that a change of venue was refused, unless it clearly appears that trial court abused its discretion." The trial judge in the case at bar had the opportunity to view the prospective jurors, watch their demeanor and form an opinion as to whether or not a fair trial could be given in the county. While it is true the appellant introduced affidavits of a number of people who testified that they did not believe a fair trial was possible, Stokes v. State, 240 Miss. 453, 128 So.2d 341 (1961) in quoting from Shelton v. State,

156 Miss. 612, 126 So. 390 (1930), states as follows:

> The Court must look to all the attendant facts and circumstances and should not and will not reverse a trial judge in the exercise of his discretion if a fair proportion of the jurors examined can give the defendant a fair trial. (240 Miss. at 465, 128 So.2d at 344.)

It is our opinion that the trial judge did not abuse his discretion; therefore, we will not overrule his decision.

The second assignment of error is that the trial court erred when it failed to properly define manslaughter in its instructions to the jury and, therefore, the jury had no guide upon which to base a verdict of guilty of manslaughter. Appellant's argument is focused on the

state's Instruction No. 2 which, in part, says "Manslaughter can also be accomplished by the commission of acts so grossly negligent as to evidence a complete disregard for human life." Appellant further argues that the state, in Instruction No. 6, mentioned "culpable negligence" but did not attempt to define the term for the jury. The gist of appellant's argument is that gross negligence is used and defined by the state rather than "culpable negligence" as used in Mississippi Code 1942 Annotated section 2232 (1956), to-wit:

> Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this chapter, shall be manslaughter.

Appellant cites Smith v. State, 197 Miss. 802, 20 So.2d 701 (1945) which defined "culpable negligence" as being of a higher degree than that which in civil cases is held to be gross negligence and must be negligence so gross as to be tantamount to wanton disregard of or utter indifference to the safety of human life." In the present case, the state qualified "grossly negligent" by adding "as to evidence a complete disregard for human life." There cannot be considered any reasonable difference in "complete disregard" and "utter indifference." Smith, supra, which has application here, defined "culpable negligence" as being a high degree of gross negligence; therefore, the language

of the state in qualifying "grossly negligent" was sufficient to properly instruct the jury on the manslaughter charge.

This cause, because of the obvious intoxicating beer, is indeed a classical example of the truth declared in Proverbs 23:32 of the Holy Bible: "At the last it biteth like a serpent, and stingeth like an adder."

For the foregoing reasons, the judgment of the lower court is affirmed.

AFFIRMED.

GILLESPIE, C.J., AND JONES, SMITH AND SUGG. JJ., CONCUR.

Opinion of the Court rendered October 9, 1972.

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, OCTOBER 9, 1972, COURT SITTING:

WESLEY PARKS

#46,902 VS

STATE OF MISSISSIPPI

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Sunflower County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 29th day of October, 1971- a conviction of MANSLAUGHTER and a sentence to serve a term of TWENTY YEARS in the State

Penitentiary (Credit for 157 days in jail)- be and the same is hereby affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellant and Noel B. Lewis and W.O. Shurden, sureties on the appeal bond herein, all of the costs of this appeal to be taxed for which let proper process issue.

MINUTE BOOK "BQ" PAGE 28

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY, OCTOBER 23, 1972, COURT SITTING:

WESLEY PARKS

#46,902 VS

STATE OF MISSISSIPPI

This cause this day came on to be heard on the petition for a rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order and adjudge that said petition be and the same is hereby denied.

MINUTE BOOK "BQ" PAGE 43

IN THE SUPRME COURT OF THE
STATE OF MISSISSIPPI

WESLEY PARKS — APPELLANT

VS. — NO.46,902

STATE OF MISSISSIPPI — APPELLEE

## NOTICE OF APEEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice is hereby given that Wesley Parks, the Appellant above named, hereby appeals in personam to the Supreme Court of the United States from the final order of the Supreme Court of the State of Mississippi affirming the judgment and conviction of the Circuit Court of Sunflower County, Mississippi.

This appeal is taken pursuant to

Volume 28, U.S.C., paragraph 1257.

Appellant was convicted of the crime of Manslaughter in violation of the statutes in that behalf made and provided by the Circuit Court of Sunflower County, Mississippi, from which conviction he prayed and obtained an appeal to the Supreme Court of Mississippi, which Court affirmed the conviction and sentence of the Lower Court on the 23rd day of October, 1972, which was a final judgment of said Court, and it is from this final judgment of the Supreme Court of Mississippi that this appeal is taken.

II.

The Clerk is herewith notified to prepare a transcript of the record in

this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The entire record of this case which is in the Supreme Court of the State of Mississippi.
2. The judgment of affirmance of the Supreme Court of Mississippi in said cause.
3. The order granting bail with supersedeas.
4. The certificate and acknowledgment of service of a copy of this notice by the Attorney General of Mississippi.

III.

The questions sought to be reviewed are whether or not Wesley Parks was denied his constitutional rights and guaranties in the trial of his case in the Circuit Court of Sunflower County, Mississippi, because of the denial by the trial judge of a change of venue after full hearing on three separate motions for a change of venue because of the vast amount of publicity given the case prior to the trial thereof by the national press associations, national weekly news magazines, television, new commentators, radio broadcasters, all the daily newspapers circulated in the area, and comments of national political leaders in agencies including

the Federal Bureau of Investigation and the President of the United States. The denial of the motions for change of venue filed by appellant prior to the trial and during the early stages of the trial of the case had the effect of denying Petitioner a fair trial and deprived him of his liberty without due process of law in violation of his rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America, for Petitioner states that the record of the trial on file before this Court will reflect that the publicity given the case in which Petitioner was charged was so great that the Sheriff of Sunflower County confined the Petitioner in the

maximum security unit at the Mississippi State Penitentiary at Parchman, Mississippi, for his personal safety because of the adverse publicity and the misleading news articles concerning the facts of said event, notwithstanding the fact that Sunflower County has a new modern and secure jail. Petitioner states that this case received nation-wide publicity based on erroneous allegations of facts and that there was such a turmoil concerning the matter that the President of the United States ordered a special investigation made by the Federal Bureau of Investigation. Also there was near riot and mob action in one section of Sunflower County as a consequence of the excessive publicity

given the matter. There were daily expressions of ill-will made against the Defendant which would prevent him from obtaining a fair and impartial trial, all of which was a denial to Petitioner of equal protection of the law as guaranteed him by the Constitution of the United States of America.

Due to ill-will, prejudgment and prejudice existing in the County as a result of the homocide, the Petitioner herein was denied the rights guaranteed him under Amendment Fourteen of the Constitution of the United States, and the refusal of the trial judge to grant the change of venue on the several renewed motions for change of venue deprived Petitioner of a fair and

impartial trial.

WESLEY PARKS, IN PERSONAM

BY: s/ Wm. E. O'Hare
OF COUNSEL FOR APPELLANT ON APPEAL

PROOF OF SERVICE

I, the undersigned Assistant Attorney General of the State of Mississippi, hereby acknowledge receipt of a copy of the foregoing notice of appeal to the Supreme Court of the United States.

This the 23rd day of October, A.D., 1972.

s/ Timmie Hancock
ASSISTANT ATTORNEY GENERAL OF MISSISSIPPI

IN THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

WESLEY PARKS — APPELLANT

VS. — NO. 46,902

STATE OF MISSISSIPPI — APPELLEE

PETITION FOR ADMITTANCE
TO BAIL WITH SUPERSEDEAS

TO THE HONORABLE
JUDGE OF THE SUPREME COURT OF MISSISSIPPI

I.

Comes Wesley Parks, appellant in the above styled and numbered cause, and respectfully shows that he was convicted of the crime of manslaughter by the Circuit Court of Sunflower County, Mississippi, the sentence of the Lower Court was affirmed on the 23rd day of October, 1972, that from this final judgment of the Court of last resort of this State, the Supreme Court of

Mississippi, the appellant has filed with the Clerk of this Court his notice of appeal therefrom to the Supreme Court of the United States in accordance with Volume 28, U.S.C., paragraph 1257, or in the alternative by Petition for Writ of Certiorari under Title 28 U.S.C., Section 2103.

II.

Appellant shows that he is entitled to bail under the laws of this State pending the outcome of his appeal to the Supreme Court of the United States, and appellant further shows that he has been at liberty under bail pending the final disposition of this cause in the Supreme Court of Mississippi in the sum of TEN THOUSAND AND NO/100

($10,000.00) DOLLARS to the conditions of which bail bond he has at all times responded.

WHEREFORE, appellant prays an order of this Honorable Court granting him bail with supersedeas in the amount as to Your Honor may deem meet in the premises, until the final disposition of his cause, said bail to be conditioned according to law, with the sureties tehreon to be approved by the Clerk of this Court, and said bond being further conditioned for the payment for all costs accrued or to accrue in this casue as may be adjudged against the Appellant.

Respectfully submitted,

/s/ Wesley Parks
Wesley Parks

BY: _____
Of Counsel for
Appellant on Appeal

PROOF OF SERVICE

I, the undersigned Assistant Attorney General of the State of Mississippi, hereby acknowledge receipt of a copy of the foregoing Petiton for Admittance to Bail with Supersedeas.

This the 23rd day of October, 1972.

/s/ Timmie Hancock
ASSISTANT ATTORNEY GENERAL
OF MISSISSIPPI

IN THE SUPREME COURT OF THE

STATE OF MISSISSIPPI

| | |
|---|---|
| WESLEY PARKS | APPELLANT |
| VS. | NO. 46,902 |
| STATE OF MISSISSIPPI | APPELLEE |

O R D E R

This cause coming on to be heard upon the petition of the appellant herein for bail with supersedeas, and the Court having read and examined the same, is of the opinion and doth hereby order that the same should be granted.

IT IS, THEREFORE, HEREBY ORDERED that the appellant, Wesley Parks, be admitted to bail with supersedeas in the amount of $10,000.00, conditioned according to law and with proper sureties thereon, and the sureties upon

said bail bond to be approved by the Clerk of this Court, said bail bond to be further conditioned for the payment of all costs accrued or to accrue herein and adjudged against said appellant, and to perfect and prosecute his appeal within the time allowed by law.

ORDERED and ADJUDGED on this the 23 day of October, 1972.

s/ Henry L. Rodgers
JUSTICE OF THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

IN THE SUPREME COURT OF THE

STATE OF MISSISSIPPI

| | |
|---|---|
| WESLEY PARKS | APPELLANT |
| VS. | NO. 46,902 |
| STATE OF MISSISSIPPI | APPELLEE |

SUPERSEDEAS BOND ON APPEAL

TO THE UNITED STATES SUPREME COURT

We, Wesley Parks, as Principal and W. O. Shurden and Noel B. Lewis, Sureties, are held and firmly bound unto the State of Mississippi in the penal sum of TEN THOUSAND AND NO/100 DOLLARS, well and truly to be paid.

The condition of this obligation is such that whereas on the 23rd day of October, 1972, a final judgment was entered in the above styled and numbered cause by the Supreme Court of

Mississippi, affirming a conviction of the said principal herein by the Circuit Court of Sunflower County, Mississippi, upon a charge of manslaughter, wherein said principal was sentenced to serve a term of twenty (20) years in the Mississippi State Penitentiary and, feeling aggrieved at the judgment of the Supreme Court of Mississippi, the said appellant and principal herein prayed and obtained an appeal therefrom to the Supreme Court of the United States of America, and his supersedeas bond on said appeal has been fixed by order of the Supreme Court of Mississippi in the amount of TEN THOUSAND & NO/100 DOLLARS, now, therefore, if said appellant shall well and truly prose-

cute said appeal and perfect his appeal as required by law and abide by all orders of either the Supreme Court of Mississippi or the United States Supreme Court pertaining thereto, and shall pay all costs as may be rendered against him in said cause, then this obligation shall be void and null; otherwise, it shall be and remain in full force and effect.

WITNESS our signatures this the 23 day of October, A.D., 1972.

s/Wesley P. Parks

s/W. O. Shurden
Surety

s/Noel B. Lewis
Surety

C E R T I F I C A T E

I, the undersigned, hereby certify

that the sureties on the foregoing bond are good and sufficient and that I would accept them as sureties in my official capacity.

This the 23 day of October, A.D. 1972.

s/ Sam J. Ely, Jr.
Circuit Court
Sunflower County, Mississippi

STATE OF MISSISSIPPI

HINDS COUNTY

I, Mrs. Julia H. Kendrick, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the foregoing are true and correct copies of opinion of the Court, Judgment entered by the Court, Order overruling Petition for Rehearing, Notice of Appeal to United States Supreme Court, Petition for admittance to Bail with Supersedeas, Order of the Court setting amount of the Bond, Appeal Bond, all filed in Cause NO. 46,902 - styled Wesley Parks vs. State of Mississippi, as the same appears of record on file in my office.

Given under my hand, with the

seal of said Court affixed at office, in the City of Jackson, Mississippi, this the 16th day of January, A.D., 1973.

s/ Julia H. Kendrick
Clerk Supreme Court

SEAL

FILE COPY

FILED
APR 3 1973
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM

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No. 72-1012

---

WESLEY PARKS,
*Petitioner,*

vs.

STATE OF MISSISSIPPI,
*Respondent.*

---

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

---

## BRIEF IN OPPOSITION

---

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State of Mississippi

J. B. GARRETTY
Special Assistant Attorney General
State of Mississippi

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# In the Supreme Court of the United States

OCTOBER TERM

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**No. 72-1012**

---

WESLEY PARKS,
*Petitioner,*

vs.

STATE OF MISSISSIPPI,
*Respondent.*

---

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
MISSISSIPPI

---

## BRIEF IN OPPOSITION

---

## OPINION BELOW

The opinion of the Supreme Court of Mississippi (petitioner's appendix) is reported as *Parks* v. *State*, 267 So.2d 302 (Miss. 1972).

## JURISDICTION

Jurisdictional prerequisites are adequately set forth in the petition.

## QUESTION PRESENTED

Was the denial of the petitioner's motion for a change of venue an abuse of discretion which operated to deprive him of a trial by a fair and impartial jury?

## STATEMENT OF FACTS

The petitioner, Wesley Parks, was indicted by the Grand Jury of Sunflower County, Mississippi, on a charge of the murder of one Joetha Collier on May 25, 1971. Under that indictment, the petitioner was tried in the Circuit Court of Sunflower County, found guilty of the crime of manslaughter, and was sentenced to a term of twenty years in the state penitentiary. The petitioner appealed said conviction to the Supreme Court of Mississippi, wherein the conviction and sentence were affirmed.

The crime for which petitioner stands convicted attracted a considerable amount of publicity, both local and national. The basic facts of the crime are substantially undisputed. The petitioner and two others were riding in an automobile down a street in the business district of Drew, Mississippi. The petitioner, a passenger in the vehicle, was armed with a 22-caliber pistol which he fired out of the window of the moving vehicle with the bullet

striking and killing one Joetha Collier who was standing with others on the sidewalk in front of a cafe. The petitioner is a white man. Joetha Collier was a teenaged colored female who had that day graduated from high school. Sunflower County, Mississippi, like most other Mississippi counties in that area, has a large percentage of negroes; in the case of Sunflower County, approximately fifty percent. The senseless killing of the young girl apparently caused a considerable amount of indignation and concern in both the white and black communities. The petitioner and his two companions, following their arrest, were held at the Mississippi State Penitentiary (also located in Sunflower County) instead of in the county jail at Indianola, Mississippi, because of some unrest in the negro community. The petitioner filed a motion for a change of venue on June 14, 1971, and that motion was denied by the Circuit Court of Sunflower County, but the court left the matter open for further review prior to trial. The motion for a change of venue was renewed, and a second hearing on the motion was had on October 18, 1971, with the court again overruling the motion. Petitioner went to trial on October 26, 1971.

The petitioner now seeks to have this court grant certiorari in order to determine whether he was deprived of his right to a trial by a fair and impartial jury resulting from a denial of motions for a change of venue.

## ARGUMENT

### There Was No Abuse of Discretion in the Denial of the Petitioner's Motion for a Change of Venue, and There Was Therefore No Denial of Petitioner's Right to a Trial by a Fair and Impartial Jury.

The rule, as it must necessarily be, is almost universally the same in state and federal court practice; that is, that rulings on motions for changes of venue are addressed to the sound discretion of the trial court, and the trial court's rulings will not be disturbed except upon a clear showing of abuse of discretion, e.g., *Miller* v. *U. S.*, 287 Fed. 864, certiorari denied, 43 S.Ct. 705, 262 U.S. 758, 67 L.Ed. 1219; *McGee* v. *State*, 40 So.2d 160, appeal dismissed, certiorari denied, 70 S.Ct. 77, 338 U.S. 805, 94 L. Ed. 487, rehearing denied, 70 S.Ct. 977, 399 U.S. 958, 94 L.Ed. 1369; *Golden* v. *State*, 71 So.2d 476, 220 Miss. 465; *Anderson* v. *State*, 152 So.2d 702, 246 Miss. 821; Fed. Rules of Criminal Procedure, Rule 21(a), 18 U.S.C.A.; *Kersten* v. *U. S.*, 161 F.2d 337, certiorari denied, 67 S.Ct. 1744, 331 U.S. 851, 91 L.Ed. 1859.

As a corollary to the rule cited above, there is, of course, the rule that in determining whether or not there has been an abuse of discretion, the appellate court will, as it necessarily must, look to the "totality of circumstances" in determining the issue.

What, then, are the "totality of circumstances" in this particular case?

It is manifest from the record, and from the brief in support of the petition filed in this court, that petitioner is relying on what he terms "reverse discrimination," and which he defines, in effect, as being a situation where the

negro community of Sunflower County was so infected with prejudice and ill will toward the defendant that a fair and impartial jury could not be obtained when at least a portion of the jury was certain to be made up of negroes.

One of the factors, of course, to be considered in matters such as this is whether or not it appears from the record that the petitioner did, in fact, receive a fair and impartial trial, even assuming, arguendo, that there was some degree of prejudice and ill will toward the defendant in the community.

There is no claim by the petitioner nor any indication in the record that any member of the trial jury was disqualified for any reason other than the assumption on the part of the petitioner that the nature and extent of the pretrial publicity and events necessarily infected the entire proceedings. The petitioner apparently did not request that the voir dire of the trial jury be taken, and there is no indication in the record as to whether or not it was necessary for the petitioner to exhaust all peremptory challenges. The only reference in the record as to the selection of the trial jury is as follows:

"(The Jury was selected during October 26, 1971 and October 27, 1971. The jurors, after being sworn, were instructed by the Court, then were given a short recess.)

"IN CHAMBERS, OUT OF THE PRESENCE AND THE HEARING OF THE JURY: (After selection of Jury, October 27, 1971)

"BY THE COURT:

"Let the record show that two hundred veniremen were drawn by the Court for a special venire in this

case. Of that number, sixty-nine were not served with summons; 131 were served with summons; of this 131, 29 were excused by the Court prior to empaneling the jury, for good cause shown; seven did not appear in Court; 95 of the special venire actually appeared in Court; of this number, 45 were excused by the Court for good cause shown, or were disqualified under the law from serving. Thirteen of this number were excused by the Court for having fixed opinions.

"There were 24 regular jurors for the week. Of this number, three were excused by the Court for good cause shown; 11 were excused by the Court for having fixed opinions. To obtain the jury of twelve plus the two alternates, the special venire and the 24 regular jurors for the week were exhausted, with the exception of six regular jurors for the week.

"The final composition of the regular jury of twelve is eight blacks and four whites. Alternate No. 1 is black; alternate No. 2 is white.

"MOTION"

"BY MR. DYER:

"Comes now the defendant, and considering the composition of the jury and considering the difficulty which the Court had in obtaining a jury of twelve, does now respectfully renew his Motion for a Change of Venue.

"BY THE COURT:

"The Court has had an opportunity to observe all these jurors and prospective jurors during the course of empaneling the jury, and the Court feels that a fair

and impartial jury has been empaneled. The Court is going to overrule the motion.

* * *

"(The Jury returned to the Courtroom, and all witnesses were sworn. The rule was invoked.)"

Respondent's analysis of the statistics is that of a total of 148 veniremen who were actually present in court, a total of 24 were excused by the court for having fixed opinions. This is approximately eighteen percent.

Respondent believes that the observation of the trial court that the court had observed the jurors and felt that a fair and impartial jury had been empaneled is entitled to great weight. Respondent further feels that this is particularly true when taken into consideration with the court's prior actions and observations on the two separate hearings afforded the petitioner on his motions for change of venue. After the first hearing, the court entered an order on June 17, 1971, wherein the first motion was overruled with the court expressing its opinion that a fair and impartial trial could be held. That order read as follows:

"IN THE CIRCUIT COURT OF SUNFLOWER COUNTY, MISSISSIPPI

"STATE OF MISSISSIPPI VS. NO. 7522 WESLEY PARKS, WAYNE PARKS AND ALLEN WILKERSON, DEFENDANTS

"ORDER

"This day this cause coming on for hearing on motion by the severed defendants, Wesley Parks, Wayne Parks and Allen Wilkerson, they being represented by counsel, for a change of venue and the court having heard and considered the same and evidence having

been had and adduced thereasto by the State and Defense, and the court being of the opinion that the defendants, Wesley Parks, Wayne Parks and Allen Wilkerson, can now be afforded a fair and impartial trial in Sunflower County, Mississippi, it is the opinion of this court that said Motion for Change of Venue should be and the same is hereby DENIED.

"ORDERED AND ADJUDGED, on this the 17th day of June, A. D., 1971.

"/s/ Arthur B. Clark, Jr., Circuit Judge"

Following the second hearing on the renewed motion for change of venue, the court ruled as follows:

"RULING OF THE COURT:

"I have heard the testimony and I have had an opportunity to observe the witnesses as they testified. I note that most of the witnesses for the defendants are from around Drew, and even some of those testified that they thought they could get a fair trial. The defendants presented very few witnesses from outside District 5, that is, the Drew community.

"I feel, after listening to this testimony, that these defendants can get a fair trial in this county. I am going to overrule this motion, but I want to say this to you gentlemen—as I recall, the Supreme Court has said that, in passing on a motion for a change of venue, whether or not the trial judge held correctly on that, they look at the entire record in the case. Now, I can assure you that when we start the trial of this case, I am going to question this panel very carefully, and if I find that a large percentage of that panel expresses a fixed opinion, I will probably reconsider the motion at that time. I just want you to know that I am de-

termined that these defendants are going to get a fair trial, and I will take another look at it when it comes time to select this jury.

"BY MR. DYER:

"Thank you, Your Honor."

The opinions expressed on the motions for a change of venue were, of course, conflicting. It appears from the remarks of the trial court that most of those testifying in favor of the motion were friends and/or neighbors of the petitioner and that petitioner's evidence did not reflect the feelings of a representative sample of a cross section of the population of the county.

It, therefore, appears manifest to respondent that the trial court at several points gave careful consideration to the motions for change of venue, and in the exercise of its sound judicial discretion, concluded that a fair and impartial trial could be afforded the petitioner in Sunflower County, Mississippi.

The crime and arrest of petitioner took place during the last week of May, 1971. The trial took place during the last week of October, 1971, or some five months later. That the passion over the commission of the crime generated in some elements of one part of the community in Sunflower County was no longer a factor is strongly indicated by the action of the petitioner himself. Following the arrest of the petitioner and his companions, they were taken and held in another area of the county; but on August 5, 1971, on motion of the defendants, they were transferred to the county jail at Indianola, Mississippi. This appears indicative that there was no longer any cause for concern as to their safety.

The respondent believes that another factor strongly, if not conclusively, supporting the proposition that the petitioner received a fair and impartial trial is the verdict of the jury finding him guilty only of manslaughter. The petitioner was indicted for murder. There was evidence on the trial of the case that the petitioner had pointed his weapon at at least one other colored person, and respondent believes that that, along with other factors in the case, would have been sufficient to support a conviction of murder. Nevertheless, a jury composed of eight blacks and four whites convicted the petitioner only of manslaughter, to which charge the petitioner, in effect, offered no defense whatsoever. Petitioner avers in his brief that the circumstances of this crime were such that a jury of reasonable men could have acquitted him. He bases this assertion on petitioner's claim during trial that he was unaware of the fact that the bullet he fired actually struck someone. That is, he claims that by such an assertion he thereby set up a defense of accident or misfortune. The undisputed facts in this case were that the petitioner fired a deadly weapon toward a group of people in a business district of a town, with said actions resulting in the death of one of those people. The element of intent under Mississippi law goes only to the murder charge and not to the manslaughter charge; and since the petitioner was given the benefit of the doubt as to his intent and found guilty only of manslaughter, respondent avers that under the circumstances of this case such a finding on the part of the jury is strongly persuasive evidence as to the fairness and impartiality of the said jury.

That the circumstances of the death of Joetha Collier attracted considerable publicity, both local and national, and that it caused indignation and tension in the community for a period of time cannot be disputed. How-

ever, the tenor of publicity surrounding these events was, in appellee's view, more conducive to encouraging the orderly processes of justice than to deny them. Where the reporting of the events was more than a simple factual presentation of the matter, it was more likely than not to be of the tenor of an article dated Thursday, June 3, 1971, published in the Sunflower County News, and which is attached hereto as Exhibit "A". In short, the pretrial publicity merely reported events and pictured a community which was concerned but one in which the overwhelming majority simply wished to see the normal processes of justice take place.

It is to be further noted that there is no claim nor indication of any improper or prejudicial action on the part of any public official.

This case does not in any way approach the factual or legal situation in those cases cited by the petitioner in support of his argument.

In *Grappe* v. *Wisconsin*, 400 U.S. 505, 27 L.Ed.2d 571, 91 S.Ct. 490, the question was not whether or not petitioner should have been granted a change of venue, but rather whether or not he was entitled to a hearing on a motion for a change of venue in the face of a Wisconsin statute denying a change of venue on a misdemeanor charge.

In *Irvin* v. *Dowd*, 366 U.S. 717, 6 L.Ed.2d 751, 81 S.Ct. 1639, the question therein was whether or not the petitioner was entitled to a second change of venue in the face of the Wisconsin statute limiting a defendant to one change of venue. There, the following factual situation is outlined:

"It cannot be gainsaid that the force of this continued adverse publicity caused a sustained excitement and

fostered a strong prejudice among the people of Gibson County. In fact, on the second day devoted to the selection of the jury, the newspapers reported that 'strong feelings, often bitter and angry, rumbled to the surface,' and that 'the extent to which the multiple murders—three in one family—have aroused feelings throughout the area was emphasized Friday when 27 of the 35 prospective jurors questioned were excused for holding biased pretrial opinions. . . .' A few days later the feeling was *described as 'a pattern of deep and bitter prejudice against the former pipe-fitter.' [*366 US 727] Spectator comments, as printed by the newspapers, were 'my mind is made up'; 'I think he is guilty'; and 'he should be hanged.'

"Finally, and with remarkable understatement, the headlines reported that 'impartial jurors are hard to find.' The panel consisted of 430 persons. The Court itself excused 268 of those on challenges for cause as having fixed opinions as to the guilt of petitioner; 103 were excused because of conscientious objection to the imposition of the death penalty; 20, the maximum allowed, were peremptorily challenged by the petitioner and 10 by the State; 12 persons and two alternates were selected as jurors and the rest were excused on personal grounds, e.g., deafness, doctor's orders, etc. An examination of the 2,783-page voir dire record shows that 370 prospective jurors or almost 90% of those examined on the point (10 members of the panel were never asked whether or not they had any opinion) entertained some opinion as to guilt—ranging in intensity from mere suspicion to absolute certainty. A number admitted that, if they were in the accused's place in the dock and he in theirs on the

jury with their opinions, they would not want him on a jury.

"Here the 'pattern of deep and bitter prejudice' shown to be present throughout the community, cf. Stroble v California, 343 US 181, 96 L ed 872, 72 S Ct 599, was clearly reflected in the sum total of the voir dire examination of a majority of the jurors finally placed in the jury box. Eight out of the 12 thought petitioner was guilty. With such an opinion permeating their minds, it would be difficult to say that each could exclude this preconception of guilt from his deliberations."

The factual situation in *Rideau* v. *Louisiana,* 373 U.S. 723, 10 L.Ed.2d 663, 83 S.Ct. 1417 also does not bear any reasonable resemblance to the factual situation in this case. There, a confession of the defendant was publicized at various times over the local television station, and members of the jury had seen and heard the same, and further, two members of that jury were deputy sheriffs of the parish in which the defendant was being tried.

Petitioner cites a number of cases rendered by the Mississippi Supreme Court, all of which are merely proof that the said court gives careful consideration to each case where this issue is raised. Such consideration was given in this case, and the Mississippi Supreme Court, finding no abuse of discretion on the part of the trial court, properly affirmed the conviction and sentence.

## CONCLUSION

Respondent avers that petitioner has wholly failed to meet the burden of proof required of him to show that he has been denied his constitutional right to trial by a fair and impartial jury, and, as a consequence thereof, his petition for a writ of certiorari to this court should be denied.

Respectfully submitted,

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# Restraint praised, more restraint asked

A week after the senseless killing of an 18-year-old black girl, Jo Etha Collier, the night of her graduation from Drew High School, Drew is easing out of the national headlines into a period of quiet but tense confrontation.

Monday, it took the form of an attempt by blacks to enter Gene's Drive-in dining room on Highway 49. The owner closed the drive-in and the blacks sat down around the entrance.

Later, he opened the cafe and the sequence was repeated.

As of press time Tuesday morning, the cafe owner had not announced what his plans will be.

Drew Mayor W. O. Williford had praise for the conduct of the people of all races during the week and urged them to use restraint during the coming week.

"I would like to express my appreciation to all the people of Drew for the way they have conducted themselves in these trying times -- I'm speaking to the people of all races," said the mayor. "They have shown by their actions that we all want peace and harmony in the community and law and order."

Only one person was arrested in Drew during the week.

The three suspects charged in the killing and being held in the state penitentiary at Parchman were arrested by law officers in Cleveland the night of the killing.

Isaiah Parsee, an out-of-town black described as an agitator, was picked up but released after Thursday's unruly demonstration, and it was reported that he left town directly afterwards, partially as a result of the advice of black leaders.

During the coming week, Mayor Williford said that he hopes people will continue to use restraint.

"Everybody let their level heads prevail and try to promote peace and harmony in the community," he said. "Please try to hold your tempers. Please remember that we are all supposedly educated, intelligent people and let's use good judgement."

Of the death of Miss Collier, who had received an award for best attitude at school awards night, Mayor Williford said, "There's nobody who regrets the death of this young girl more than I do, and my sympathies go out to the family and friends."

Authorities will comment little for publication on the evidence against the three men being held in Parchman on murder charges. They're afraid that they will hurt their case in court by releasing any evidence before the case comes to trial.

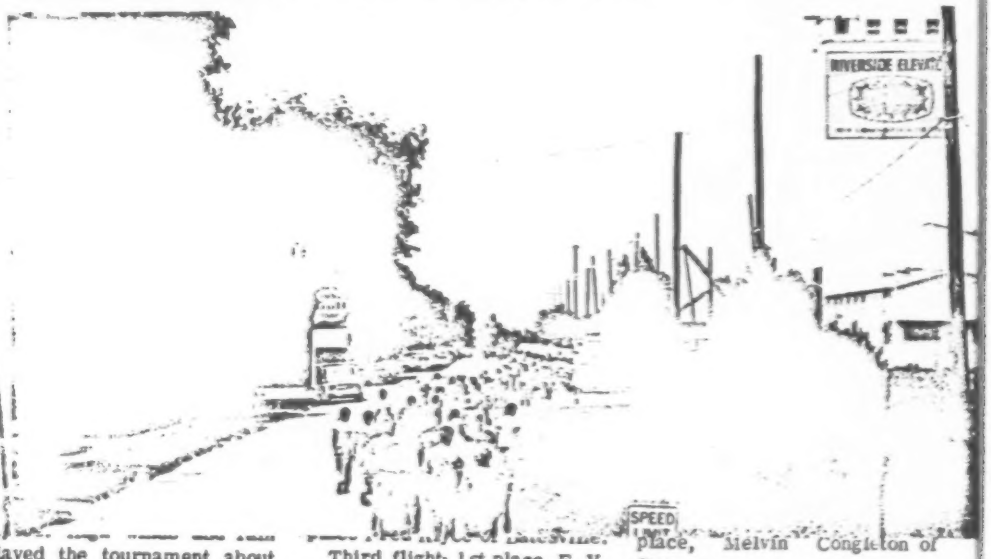
Arrested at 2 a.m. Wednesday, after the shooting took place at about 9:45 Tuesday evening, were Wesley Parks, 26, of 2196 Theda in Memphis, Wayne Parks, 25, of near Drew, and their nephew, Allen Wilkerson, 19, of Memphis.

Recovered from their car was a .22-caliber pistol reportedly belonging to Wesley Parks -- were a "riot gun" (a shotgun with a short barrell), a 22-caliber automatic rifle, and a knife, it was reported.

Two of the men were reportedly "moderately intoxicated" at the time of the arrests while the other appeared not to be.

The funeral Sunday afternoon at Drew High auditorium, went off quietly, except for getting started about an hour and a half late.

For Mayor Williford and Police Chief J. D. "Dink" Fleming, it has been a 120-hour-long work week. Speaking of Fleming, Williford said, "He's done a really outstanding job. Not many people have been exposed to the problems like he has been called on to meet and he's come through without a bobble."




## ...ers at Drew ... are named

...Eula Patt, Jimmy Perkins, and Richard Williamson.

...all for the county," said Mr. ...rett.

...delayed the tournament about 1 and 1/2 hours Sunday.

...Third flight: 1st place, E. V. Chapman of Marks; second ... place, Melvin Congleton of Drew.

A prize for the longest drive ...